
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

DIRTT ENVIRONMENTAL SOLUTIONS,
INC.; DIRTT ENVIRONMENTAL
SOLUTIONS LIMITED,

Plaintiffs,

v.

LANCE HENDERSON, KRISTY
HENDERSON, FALKBUILT, LLC and
FALK MOUNTAIN STATES, LLC.,

Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING IN PART MOTION
TO STAY

Case No. 1:19-cv-144 DBB DBP

District Judge David B. Barlow

Chief Magistrate Judge Dustin B. Pead

This matter is before the court on Defendant Falkbuilt Ltd.’s Motion to Stay Memorandum Decision and Order. (ECF No. 151.) Falkbuilt requests the court stay its memorandum decision and order granting the motion to compel production of Falkbuilt’s information from Canadian employees. Falkbuilt filed a concurrent objection to that order with Judge Barlow. (ECF No. 150.) A decision on that objection is pending and is not before the undersigned. Falkbuilt seeks a stay based on the pending objection, and on the basis of waiting for the disposition of a Motion to Dismiss Amended Complaint, that was filed late last year.

“Whether to grant a motion to stay is within the discretion of the court, which considers the following factors: (1) whether granting a stay would likely simplify the issues before the court; (2) the stage of the litigation; and (3) a balancing of prejudice to the parties.” *Lifetime Prod., Inc. v. Russell Brands, LLC*, No. 1:12-CV-26 DN, 2013 WL 5408458, at *2 (D. Utah Sept. 25, 2013). Also relevant here, is Federal Rule 72, which provides:

A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections

and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

Fed. R. Civ. P. 72.

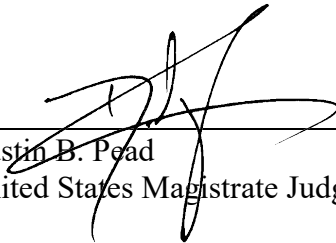
Falkbuilt has filed a timely objection to the court's order requiring discovery from Canadian employees. As such, it is proper to stay that order pending resolution of the objection.

To stay the order pending resolution of the Motion to Dismiss, however, is more speculative. First, it is not clear that the matter would be wholly resolved as alleged by Falkbuilt because other Defendants, such as Lance Henderson and Kristy Henderson, would remain in this action. Thus, discovery may still be needed as to Falkbuilt's Canadian employees. Second, although the litigation may be relatively young in comparison to some cases, this matter was still filed in December 2019, and the discovery requests have been pending for over ten months. Finally, Falkbuilt's claims for prejudice arising from "cross-border discovery" are speculative, especially in light of Plaintiffs' assertion that most of the discovery would be electronic.

Accordingly, Falkbuilt's motion is GRANTED IN PART. It is granted a stay as to the objection to the underlying discovery order. IT IS DENIED WITHOUT PREJUDICE as to granting a stay pending resolution of the Motion to Dismiss. Once the objections are resolved, the court may consider a new motion to stay pending the disposition of the motion to dismiss, if Falkbuilt can offer more justification than is currently offered.

IT IS SO ORDERED.

DATED this 25 March 2021.



Dustin B. Pead
United States Magistrate Judge